IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH.

CWP No.3560 of 2006
Date of decision: 07.08.2007

J.C.T. Electronics Ltd.

-----Petitioner

Vs.

Presiding Officer, Industrial Tribunal & another.

-----Respondents

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE AJAI LAMBA

Present: Mr. P.K. Mutneja, Advocate
for the petitioner.

Mr. D.S. Patwalia, Advocate
for respondent No.2.

ADARSH KUMAR GOEL, J.

This petition challenges order dated 16.2.2006, Annexure P-12, passed by the Industrial Tribunal, Punjab.

Following dispute had been referred for adjudication to the Industrial Tribunal:-

> "Whether the demands of the union as mentioned in the demand notice are justified and in order? If so, to what benefit are the workmen entitled in this regard and with what details?"

The dispute was raised by the workman by giving a demand notice on the issue of service conditions relating to pay, allowances and other service conditions.

During pendency of the dispute before the Tribunal, an application for disposal in terms of settlement dated 26.8.2004 was made. The settlement, Annexure P-6, purports to have been arrived at between JCT Electronics Limited, the petitioner and JCT Electronics workers Union (Regd.) (HMS) while the dispute pending before the Tribunal was raised by JCT Electronics Employees Welfare Association (Regd.), which was a different Union. The claimant Union opposed the disposal of reference in terms of the settlement.

The Tribunal rejected the application for disposal of the application in terms of the settlement.

The Tribunal observed that the settlement was not arrived at during the conciliation proceedings as no conciliation proceedings were pending, the matter having already been referred for adjudication.

Main contention raised in the petition is that the settlement having been signed by 1359 workers out of total 1370 workers, the reference should have been disposed of in terms of such a settlement. In the alternative, it is submitted that respondent No.2, Union, not having substantial following, could not represent the workmen in dispute. It was also submitted that the petitioner management did not have financial capacity and was a sick Company and proceedings were pending with the Board of Industrial and Financial Reconstruction under the provisions of Sick Industrial Companies (Special Provisions) Act, 1985.

Learned counsel for the workmen submitted that in view of provisions of Section 20(2) of the Industrial Disputes Act, 1947,

conciliation proceedings stood concluded on giving of report by the Conciliation Officer and on making of reference. Reliance has been placed on judgment of the Hon'ble Supreme Court in ***Jhagrakhan Collieries (P) Ltd.*** *v.* ***G.C. Agrawal, Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Jabalpur & others*** AIR 1975 SC 171. As regards financial status of the Company, stand of the workers in para 6 of the reply is that the Company started a new production unit in Gujarat and was siphoning all the funds from the existing unit at Mohali to Gujarat.

We have considered the rival submissions and perused the record.

The question for consideration is whether settlement arrived at, otherwise than during conciliation, wound render the dispute which already stood referred redundant and whether on that ground, proceedings before the Industrial Tribunal are liable to be quashed.

It is clear from the record that settlement was arrived at after conciliation proceedings were concluded and the industrial dispute was referred for adjudication. The Union which raised the dispute was not a party to the settlement.

In view of above circumstances, it is well settled that reaching of a settlement with another Union will not *ipso facto* bind the Union which was not party to the settlement. Reference may be made to law laid down by the Hon'ble Supreme Court in ***Jhagrakhan Collieries*** *(supra)* and ***Tata Chemicals Limited*** v. ***Workmen*** AIR 1978 SC 828, which have also been reiterated in ***ANZ Grindlays Bank Ltd.***

v. ***Union of India and others*** (2005) 12 SCC 738. In ***ANZ Grindlays Bank Ltd.*** *(supra)*, the Hon'ble Supreme Court observed:-

> "8.....A plain reading of the provisions of Section 18 would show that where a settlement is arrived at by agreement between the employer and the workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement in view of the clear language used in sub-section (1) thereof. Sub-sections (2) and (3) of Section 18 contemplate different situations where an arbitration award has been given or a settlement has been arrived at in the course of conciliation proceedings. In *Tata Chemicals Ltd.* v. *Workmen* AIR 1978 SC 828, it was held as under: (SCC p. 50, para 13)
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> > "[W]hereas a settlement arrived at by agreement between the employer and the workmen otherwise than in the course of conciliation proceeding is binding only on the parties to the agreement, a settlement arrived at in the course of conciliation proceeding under the Act is binding not only on the parties to the industrial dispute but also on other persons specified in clauses (*b*), (*c*) and (*d*) of sub-section (3) of Section 18 of the Act."
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> **9.** The Federation (the second respondent) not being party to the settlement, it is obvious that the same is not binding upon it in view of sub-section (1) of Section 18 of the Act. Thus the settlement dated 18-8-1996 did not affect the rights of the Federation (the second respondent) in any manner whatsoever and it can possibly have no grievance against the said settlement."

We are conscious of the fact that even in a situation where a settlement is not binding on all the parties, a pending dispute can be

settled on the basis of settlement which is fair and reasonable and is accepted by majority of workers, as held, inter alia, in ***Herbertsons Ltd.*** ***v. The Workmen of Herbertsons Ltd. and others*** AIR 1977 SC 322, ***M/s Tata Engineering and Locomotive Co. Ltd.*** ***v. Their Workmen*** AIR 1981 SC 2163, ***Barauni Refinery Pragatisheel Shramik Parishad*** ***v. Indian Oil Corporation Ltd.*** AIR 1990 SC 1801 and ***National Engineering Industries Ltd.*** ***v. State of Rajasthan and others*** AIR 2000 SC 469.

In the present case, genuineness of the settlement as well as fairness and reasonableness thereof have been put into issue, not only by the Union which raised the dispute, but also the Union which was a party to the settlement. In such circumstances, we are unable to hold that the dispute has ended and proceedings before the Industrial Tribunal have been rendered redundant. Such a disputed question of fact can be best gone into by the Tribunal itself.

Accordingly, we do not find any ground to interfere at this stage. The Tribunal will examine the matter in accordance with law. Nothing expressed in this order will be treated as final and binding between the parties in respect of issue to be decided by the Tribunal.

The writ petition is disposed of accordingly.

(ADARSH KUMAR GOEL)
JUDGE

August 07, 2007 **(AJAI LAMBA)**
ashwani **JUDGE**